IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8958 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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V B L MATHUR(WRONGLY)DESCRIBEDAS PARTNER & VAHIVATKARTA OF - Applicant(s)
Versus
RAMESHCHANDRA MUKTILAL KHANDEWAL, PROP. OF RAVI & 2 - Respondent(s)

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Appearance :
MR BJ TRIVEDI for Applicant(s) : 1,MR JT TRIVEDI for Applicant(s) : 1,
MR AJAY R MEHTA for Respondent(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 2,
UNSERVED-EXPIRED (R) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/10/2007

ORAL JUDGMENT

1. The applicant is the original accused no.3. He has prayed for quashing of a complaint bearing Criminal Case No.2273/1999 filed before JMFC, Dahod by respondent no.1 herein.

2. In the complaint, it is stated inter-alia that between the complainant and the accused there were business relations and the complainant used to supply various items such as food grains, pulses, oilseeds etc. The accused are partners of a partnership firm engaged in running oil mill. The complainant has further stated that the accused had from the complainant purchased Castor seeds between 1.8.1994 to 1.6.1995 for which he was paid Rs. 2,89,567/-, but a sum of Rs.32,938/- has remained unpaid. It is further stated that the accused did not supply Form 24-B as required under the Gujarat Sales Tax Act. It is stated that the complainant reminded the accused time and again and the accused promised to supply such Forms but never did so and thereby committed offence punishable under Section 409 read with Section 114 of the Indian Penal Code.

3. Having heard learned advocate Shri J.T Trivedi for the applicant, learned advocate Shri Biniwale for leaned advocate Shri Ajay Mehta and learned APP Shri Mengdey for the State, I find that the complaint does not disclose any offence. The complainant has not made any

grievance about non payment of sale price or the goods supplied. Only allegation is that despite repeated promise, the accused failed to provide for Form 24-B. On account of the complainant, it is contended that such Forms would have enabled the complainant to receive refund of sales tax paid by him. Even if this is true there are no ingredients of Section 409 disclosed in the complaint. For driving home the offence under Section 409 of the Indian Penal Code, it is necessary that there has to be entrustment of any property or any domain to any property. In the present case, no such allegation is made. Mere failure on part of the applicant to supply necessary Forms may give rise to a civil dispute. Certainly no offence punishable under Section 409 can be stated to have been committed.

4. In the result, application is allowed. The complaint bearing Criminal Case No.2273/1999 filed before JMFC, Dahod, is quashed. Rule made absolute.

(Akil Kureshi,J.)

(raghu)